DOCUMENT RESUME

ED 395 875 SO 026 400

AUTHOR	Thompson, Marcia A.; Sass, Charles R.
TITLE	For Which It Stands: Flag Burning and the First Amendment. Teacher's Guide.
INSTITUTION	Close Up Foundation, Arlington, VA.
PUB DATE	95
NOTE	24p.; Matching videotape not available from ERIC.
AVAILABLE FROM	Close Up Publishing, 44 Canal Center Plaza, Alexandria, VA 22314 (25-minute videotape and this "Teacher's Guide": $59.95).
PUB TYPE	Guides - Classroom Use - Teaching Guides (For Teacher) (052)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	*Citizenship Education; Civics; *Civil Liberties; Constitutional Law; Elementary Secondary Education; *Freedom of Speech; Instructional Materials; *Law Related Education; Learning Activities; Nationalism; Patriotism; Social Studies; Teaching Methods; Thinking Skills
IDENTIFIERS	Bill of Rights; Close Up Program; *First Amendment; *Flag Burning; Flags; United States Constitution

ABSTRACT

This teacher's guide is designed to accompany the two-part videotape "For Which It Stands: Flag Burning and the First Amendment." The videotape and teacher's guide should help students to: (1) understand the emotion and significance of the flag-burning issue; (2) examine the free speech aspect of the First Amendment of the Bill of Rights; (3) evaluate the response of government officials to the Supreme Court's decision that a Texas law forbidding the desecration of the flag violated the free speech protections of the First Amendment and the debate over amending the Constitution to prevent flag burning; and (4) compare and contrast the many perspectives people have on patriotism, protest, and free speech. The guide contains four activities that involve class discussions and small-group work. The active learning approach encourages students to go beyond recognition or knowledge of facts to begin analyzing, synthesizing, and evaluating the issues and concepts being studied. (LH)

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For Which It Stands

Flag Burning and the First Amendment

Teacher's Guide

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For Which It Stands

Flag Burning and the First Amendment

Teacher's Guide

Written by Marcia A. Thompson and Charles R. Sass

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To the Instructor

The First Amendment protects many rights Americans hold most dear, including freedom of speech. But what is "speech"? Does freedom of speech mean spoken words alone, or does it also include actions such as street demonstrations or flag burning? In some cases, the right to free speech has been limited by the courts. What, if any, limits on free speech should be allowed in a democracy?

The Supreme Court, in the case of *Texas v. Johnson* (1989), ruled that a Texas law forbidding desecration of the American flag violated the free speech protections of the First Amendment. Many Americans objected to the Court's decision and called for a law or constitutional amendment to protect the flag. Other Americans, however, agreed with the Court and said that one of the things that makes the Bill of Rights a great document is that expressive, even controversial, actions such as burning a U.S. flag are protected. What arguments can both sides make concerning this issue? Is the American flag a sacred symbol that needs protection, or does burning the flag constitute political speech protected by the First Amendment? Close Up has developed this videotape to examine the flag-burning issue and how it relates to free speech and the First Amendment.

About the Video

"For Which It Stands: Flag Burning and the First Amendment" is a two-part, twenty-five minute videotape that examines free speech as represented by the issue of flag burning as a form of protest against the U.S. government.

The video is divided into two parts. The first part tells the stories of two men:

- Eugene "Red" McDaniel, a former U.S. Navy fighter pilot who was shot down over North Vietnam, captured by communist soldiers, and held for six years in captivity, where he helped make a miniature flag as a symbol of what he was fighting for, and

- Gregory Lee "Joey" Johnson, who burned the U.S. flag at the 1984 Republican National Convention in Dallas and was arrested for violating a Texas law forbidding "desecration of a venerated symbol." Johnson's case eventually made its way to the U.S. Supreme Court, where the Court overturned his conviction.

The second part of the video examines the repercussions of the Court's decision and how the battle lines were drawn in the country between those who were outraged by the decision and those who agreed with it. Your students will hear facts and opinions on both sides of the issue.

About the Guide

This guide is designed to help your students define and discuss the issue of flag burning as it applies to free speech. The guide is composed of four activities, each of which can be used at different points in the lesson. The first activity should be used to brief the students on the issue and turn their thoughts toward the American flag as a national symbol. Activity 2 will help students understand how the perspectives of individuals add controversy to an issue. Activity 3 is designed to be used with the two-part video and will guide students toward seeing

the importance of the case of *Texas v. Johnson* and how it applies to free speech. The final activity can be used for post-viewing and review. The activities are as follows:

Activity 1: The Flag—What Does It Symbolize?

Activity 2: Perspectives on Freedom of Speech

Activity 3: Flag Burning and the First Amendment

Activity 4: Flag Burning—Wrong or a Right?

The guide also provides you with additional suggestions for making this a successful and enjoyable learning experience. The teaching strategies and activities contained in the guide can be used in a variety of ways. Feel free to develop or adapt the activities to suit your teaching style, the needs of your students, and the amount of time you have to cover each topic.

Goals

This videotape and instructor's guide should help students to:

1. understand the emotion and significance of the flag-burning issue.
2. examine the free speech aspect of the First Amendment of the Bill of Rights.
3. evaluate the response of government officials to the Supreme Court decision in *Texas v. Johnson* and the debate over amending the Constitution.
4. compare and contrast the many perspectives Americans have on patriotism, protest, and free speech.

Student Activities

The activities are designed to provide a variety of educational experiences for your students. Rather than following a traditional lecture format, all of the activities involve class discussions or small-group work. This active learning approach encourages students to go beyond mere recognition or knowledge of the facts to begin analyzing, synthesizing, and evaluating the issues and concepts under study.

Tips on Leading Effective Class Discussions

All of the activities in this guide involve some class discussion. Following these procedures will increase the effectiveness of your discussions.

- Structure class discussions to involve the entire class; avoid creating a dialogue between the teacher and a few students. Make a special point of encouraging students to speak directly to one another rather than to you.

- Sequence your questions so that more students can participate. Use Bloom's Taxonomy to help you develop your questions. Sequencing is important because it develops a concept or idea from rudimentary to more sophisticated.

- Incorporate "wait time" into your discussion periods. You should wait for all students to respond to a question; if students cannot respond successfully, rephrase the question and try again.

Tips on Conducting Small-Group Work

Small-group work is an important part of the activities in this guide. Stress the need for students to listen, to solicit opinions from all group members, to focus on issues rather than on personalities, to focus on the assigned topic and task, to resolve conflicts, to move the discussion along, and to probe the responses of other students.

Indicate to students that they should work to guarantee that everyone in their group participates. After the activity, conduct an examination of group participation so that students understand that their ability to work together is as important as the conclusions they reach.

Activity 1

The Flag—What Does It Symbolize?

Objectives

After completing this activity, students will be able to:

1. better understand the emotions surrounding the flag-burning issue.
2. identify people on both sides of the flag-burning issue.
3. articulate their own thoughts about flag burning.

Procedures

1. Introduce the lesson on flag burning and the video "For Which It Stands" by spending a few minutes talking about national flags and what they represent. You may want to display an American flag in the front of the room and encourage your students to jot down a few thoughts about what this symbol means to them. Why do nations have flags? What do the styles and colors signify? What other national symbols does the United States have? Point out that the attitudes of Americans toward the flag run the gamut from those who hold the flag sacred to those who hate what it represents. Tell the class that they are about to begin a lesson about flag burning, its significance as an act of protest, and its relationship to the free speech clause of the First Amendment of the Bill of Rights. Explain that the flag-burning issue can bring out strong emotions in people and that it is difficult to reach a consensus among Americans about what the flag should represent.

2. Next, distribute **Student Handout 1— Flag Burning: Crime or Free Speech?** Mention to your students that the quotes on this handout have been taken from the videotape and are representative of the different views expressed. Allow students enough time to complete the handout. After they have finished, review their responses in a class discussion. Encourage students who disagree to explain their positions. After a thorough discussion of each quote, collect the handouts and average the ratings for each item to get an idea of where the class stands. Put the averages on the board.

Note to teacher: During the discussion you may want to tell your class the names of the speakers of the quotes on the handout. They are as follows: Eugene "Red" McDaniel—1, 3, 6, 11; Gregory "Joey" Johnson—4, 5, 7; Bruce Fein (attorney and newspaper columnist)—12, 14; Representative Les AuCoin (D-Oreg.)—2; Justice Oliver Wendell Holmes—8; Kathie Drew (assistant district attorney, Dallas Co., Texas)—9; Robert Peck (ACLU attorney)—10; President George Bush—13; Representative Bob Michel (R-Ill.)—15; Senator Bob Kerrey (D-Nebr.)—16; Senator George Mitchell (D-Maine)—17.

3. Conclude by telling the class that they are going to watch a video about flag burning and its relationship to free speech and the First Amendment. Ask them to keep in mind the results of the survey they completed as they watch the video. Tell them to listen for the quotes in **Student Handout 1** and try to remember who said them. Finally, tell them that at the end of the entire lesson, they are going to have a chance to respond again to the quotes on the handout.

Additional Suggestions

1. Several veterans and civic organizations have published pamphlets and posters about proper flag etiquette and treatment of the American flag. Have interested students gather such information and share it with the class. Then, lead a discussion about flag etiquette and treatment. Have students ever seen flags improperly displayed, such as flags flying at night without proper lighting or flags flying in the rain? Compare violations of flag etiquette with flag burning for the sake of protest. Your students might be interested to find out that the correct method of disposing of flags that are tattered and soiled is to burn them.

2. Ask students to research the history of the U.S. flag and how it came to look the way it does today. Others may be interested in finding out more about other common patriotic symbols, writings, and songs such as the "Star Spangled Banner," the "Pledge of Allegiance," the eagle, the motto *E Pluribus Unum*, and so forth. Students should report their findings to the rest of the class. You may want to display such articles on the bulletin board and include a short written history with each.

In discussing the national anthem, ask students to react to proposals made by some Americans that the anthem be changed from the "Star Spangled Banner" to a tune that is easier to sing and that does not speak of war. Suggestions have included "America the Beautiful" and "This Land Is Your Land." What do they think about the renditions of the anthem by Jimi Hendrix and Roseanne Arnold on the video?

3. In today's multicultural classrooms, it is common to find students from several countries. If this is the case in your class, you may want to have students who have immigrated to the United States show their native country's flag or other national symbols and talk about their history and significance. They should address the issue of how important the flag is to people of that country and whether it is legal to burn the flag there. Ask them about freedom of speech in their native land and if they think flag burning would be considered a legitimate statement of protest.

Activity 2

Perspectives on Freedom of Speech

Objectives

After completing this activity, students will be able to:

1. recognize differing perceptions and points of view.

2. compare and contrast views on patriotism and the American flag.

3. evaluate the importance of freedom of speech.

Procedures

1. This activity should be completed before students view the videotape. Distribute **Student Handout 2—Whom Do You See?** Working individually, students should describe the woman in the illustration. Then have students who saw a young woman go to one side of the room and students who saw an old woman go to the other side. Why did some see the picture one way and some the other? Is it possible for students who at first saw one image to see the other? At the moment, students are separated into groups. Would they always want to be separated because of the way they see things? Is there any value to having different viewpoints? Why? Have students return to their seats.

2. Next, explain to students that the authors of the Bill of Rights realized that people hold different views and that, for democracy to work, freedom to hold and express those views had to be protected. Some experts say that the strongest and most important constitutional freedoms are espoused in the First Amendment. Write the First Amendment on the board:

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

Explain that judges are responsible for interpreting the meaning of those words as written by the framers of the Constitution.

3. Divide students into groups of two or three, and have them come to consensus on a definition of "freedom of speech." Next, distribute **Student Handout 3—Is It "Speech"?** After students complete the handout individually, have them work in their groups to reevaluate their definitions. Discuss their definitions and responses with the whole class. (Note: Do not reveal the correct answers at this time. They will be discussed in Activity 3.) Would students change their definitions of freedom of speech after the discussion? How? What difficulties did they have while completing their definitions? Were they able to agree when they were in their groups? Remind students that just as people disagree as to what the figure on the previous handout represented, so do many Americans disagree about what the words in the Constitution actually mean.

Conclude by telling students they are about to see a video that shows how Americans disagree over the status and treatment of what some view as the ultimate symbol of a united American people—the American flag.

Additional Suggestions

1. Have students research and write about what it might be like to have differing viewpoints in other countries and time periods. Examples might include the Soviet Union under Joseph Stalin; the United States during the "Red Scare" or the era of McCarthyism; China during the Cultural Revolution; South Africa under apartheid; Iran under the Ayatollah Khomeini; and so forth. What was it like to be "different" in these cases? How does freedom of expression in these cases compare with the freedoms in the United States today? Can a person be completely free to be different in the United States today? If not, why?

2. In a one-page essay, have students address the question, "Should the American flag be protected?" Ask for volunteers to read their essays in class.

3. Explain that differing views are represented in the two-party system in the United States. Have students research the basic philosophies of the Democratic and Republican parties. What are differences between the ways the two parties look at the same issue? Would government be better or more fair if one party had an overwhelming majority of power? What are strengths and weaknesses of a divided government, in which the president is from one party and Congress is controlled by the rival party?

Answers to Student Handout 3—Is It "Speech"?

1. N—Would jeopardize public safety.
2. Y—Free verbal exchange of ideas is one of the most clearly protected freedoms.
3. N—Not protected in privately owned facilities. Would only be protected in a government-owned/operated stadium.
4. Y—Supreme Court ruled in *Tinker v. Des Moines School District* that students' freedom of speech could only be infringed upon if it threatened to disrupt the school's educational mission.
5. Y—This right is protected under both freedom of speech and freedom of assembly.
6. N—Supreme Court has ruled that students may not use sexually suggestive language in school. However, in *Cohen v. California*, the Court ruled that even arguably obscene language could be used by adults making political statements if the language was used to express intense emotions.
7. N—Supreme Court has ruled that such verbal abuse is not protected because it promotes violence rather than the free exchange of ideas.
8. Y—The Court says freedom of speech also grants one the freedom not to speak.
9. N—The Court has ruled that slander and libel are not protected speech.
10. Y—The Court has ruled that such speech is allowed as long as it does not encourage immediate and specific unlawful actions.
11. Y—As long as the march is peaceful and orderly.
12. Y—The Court has ruled that flag burning is symbolic speech protected by the First Amendment.

Activity 3

Flag Burning and the First Amendment

Objectives

After completing this activity, students will be able to:

1. discuss the opinions in the Supreme Court case *Texas v. Johnson.*

2. compare and contrast the variety of images in Part I of the video.

3. evaluate the rights and responsibilities in freedom of speech.

Procedures

1. After viewing Part I of "For Which It Stands," discuss the contrasting views illustrated by having students call out images they saw in Part I. Write responses on the board. Go back over the list and discuss the kinds of feelings (such as patriotism, hatred, rebelliousness, respect, etc.) associated with those images. What did the flag mean to Red McDaniel, the former POW in Vietnam? What did the flag mean to Joey Johnson, the young man who burned the flag? Is one view right and one wrong? Should there be a right and wrong in this case? Why or why not?

2. Next, explain that the act of burning the flag resulted in Joey Johnson's being charged with and convicted of violating a state law prohibiting flag desecration. Johnson believed his actions were protected by the First Amendment and took his case all the way to the U.S. Supreme Court. Do students think that the act of burning the American flag is protected under freedom of speech? Distribute **Student Handout 4—*Texas v. Johnson*** and have students read the differing opinions. If any students know the actual decision in this case, encourage them not to tell the rest of the class at this time.

Then, divide the class into several teams who will debate from opposite sides of the issue. Half of the teams will debate the view of Opinion A, and the others Opinion B. Organize as many debates as are manageable. After teams have prepared and debates have been held, students should decide by class vote which decision they think prevailed. Time may limit the number of debates you can have or the length each side will have to present their arguments and rebuttals.

3. Show Part II of "For Which It Stands." Explain to students that Opinion B, written by Justice William Brennan, was the opinion of the majority of the Court. Opinion A, written by Chief Justice William Rehnquist, was the dissenting opinion. Now, share the answers to **Student Handout 3—Is It "Speech"?** with the class. Were students surprised by any of the answers? Why is free speech important? What would politics in the United States be like without free speech? What would life in the United States be like without free speech? What is the best way to counter speech or expression with which a person disagrees? Why is it important not to remain silent in a democracy?

4. Conclude by explaining that on many issues, Americans hold specific views but fail to express them. Thus, this group is sometimes labeled the silent majority. However, those Americans risk having their points of view overlooked on crucial legislative and policy decisions. While freedom of speech is a carefully protected freedom, it also carries with it some responsibility to participate and maintain the democracy on which the right is based.

Additional Suggestions

1. Have students write a one- or two-page essay discussing the right and responsibility of freedom of speech. Ask for volunteers to read their essays in class.

2. In a brainstorming session, have students list some of the views and attitudes toward the flag from Part II of the video. Have them speculate as to which view a majority of Americans hold. What view would the majority of people in their community hold? Why do students think so? Then, have students develop a community or school survey measuring attitudes toward the flag. Questions might include: Do you believe that flag burning should be protected under freedom of speech? If not, would you favor a constitutional amendment that would limit freedom of speech in the case of flag burning? Urge students to keep the survey short and easy to answer. Two to five questions should be adequate. After they compile their results, compare them to their earlier speculations.

3. Several people in the videotape, including President Bush, recommended amending the Constitution because they disagreed with the Supreme Court's decision in the *Texas v. Johnson* case. But Bruce Fein posed the question, "Do we really want to get into a pattern of amending the Constitution every time we think the Supreme Court has erred?" What do students think about amending the Constitution? Have them review the twenty-seven amendments. What circumstances brought about the various amendments to the Constitution? Have there been any amendments that students think were mistakes? Why has the Constitution endured so long?

Activity 4
Flag Burning—Wrong or a Right?

Objectives

After completing this activity, students will be able to:

1. explain the relationship between flag burning and free speech.
2. discuss why the protections of the First Amendment are important to people from all points on the political spectrum.
3. understand that the United States is made up of many different people with many opinions and attitudes.

Procedures

1. After you have shown the video and completed the appropriate activities, distribute new copies of **Student Handout 1—Flag Burning: Crime or Free Speech?** and give students time to respond to the quotes a second time. Then, discuss each quote briefly and average the scores just as you did in Activity 1. Were there any changes from the first time? Which quotes reflect the most change? Which reflect the least? Were students' opinions affected by the video? What caused them to change?

2. Next, spend some time talking to your students about their overall impression of what they have just seen in the video. Some will probably side with Captain Red McDaniel and his attitude about protecting the flag, while others will believe that flag burning is clearly protected by the First Amendment and that Joey Johnson was merely exercising his free speech rights. One impression that will likely emerge is that of the contrasts in the video: McDaniel vs. Johnson, Bush vs. Mitchell, flag waving vs. flag burning, traditional versions of the national anthem vs. Hendrix and Arnold versions, and so forth. Discuss those contrasts with your students, and then try to get them to decide what such apparent divisions mean for the nation. After discussing the video, the characters, and the contrasts, distribute copies of **Student Handout 5—Class Poll.** Give them a few minutes to mark their answers. Collect the handouts, tally the scores, and place the results on the board. Give the handouts back to the students. (It doesn't matter if they get back their own—names will not be on them.)

3. Conclude by going through each item on **Student Handout 5** and discussing the class's attitudes about each. Encourage students who disagree on certain items to explain their positions. Ask them if they have gained any insight into free speech, the First Amendment, the Bill of Rights, and the entire Constitution.

Additional Suggestions

1. Invite individuals or members of community organizations to speak to your class about free speech and the First Amendment or flag burning, or both. Representative organizations might include veterans groups, peace organizations, religious groups, political parties, and so forth. Individuals could be lawyers, community activists, tax protesters, elected officials, and the like. Encourage students to ask questions (which they should prepare in advance).

2. Have interested students research and report on all other rights—besides freedom of speech—protected in the Bill of Rights and the Constitution. Some may want to study other rights in the First Amendment. Others should look at rights in the other amendments—especially the rights of persons accused of crimes and how they are protected or persons whose rights are protected because they are minorities, women, disabled, and the like. Ask for volunteers to read their reports to the whole class.

3. Patriotism and professed "love of country" have often surged when the United States has gone to war, sometimes at the expense of freedom of speech and other rights. Organize your class into six groups and assign each to study a certain war period and report their findings back to the class. They should look at how patriotism was exhibited during their assigned war, and whether it flourished or floundered. They might want to find out if certain freedoms were violated in the name of war. Reports may be given in the form of roundtable discussions or simply by having one member of each group present its report. Groups should consider the following U.S. wars:

- Civil War
- Spanish-American War
- World War I
- World War II
- Vietnam War
- Persian Gulf War

Student Handout 1

Flag Burning: Crime or Free Speech?

Read each quote carefully and circle the number that comes closest to your degree of agreement.

	strongly disagree 1	disagree 2	mildly agree 3	agree 4	strongly agree 5
1. And what the flag does, it embodies everything that freedom embodies.	1	2	3	4	5
2. The brave men and women who are buried there [at Arlington National Cemetery] did not die for the flag, though they loved it; they died for the freedom that that flag represents.	1	2	3	4	5
3. It [the flag] was a symbol. It represented everything we were there [in Vietnam] to fight for.	1	2	3	4	5
4. Actually what the American flag is is a symbol of American empire. It doesn't stop at the American border. It flies over all the ugly things that they [Americans] do throughout the world. It was the flag painted on the jets that dropped napalm on the Vietnamese people; it was painted on the sides of the bombs dropped on Hiroshima and Nagasaki; it's the flag that the Seventh Cavalry carried when they massacred the Native Americans at Wounded Knee.	1	2	3	4	5
5. I think generally one of the inspiring things about youth is that they tend to look at the world the way it should be rather than the way it is.	1	2	3	4	5
6. Perhaps we should just reinstill the pride and patriotism that's needed in young people today to make this country great. We should put the "Pledge of Allegiance" back in schools. We should not be afraid to talk about [our] faith in schools. Those are the things that make this country great, and I think the flag embodies all those things.	1	2	3	4	5
7. Burning the flag ain't no crime; this is a revolutionary celebration.	1	2	3	4	5
8. Free speech is important, not for the words that we like, but rather for the words that we hate.	1	2	3	4	5

9. The flag is important because it is the symbol of the United States. . . . The act of burning the flag is likely to cause a breach of the peace. . . . Flag burning is an invitation to violence. . . . The states should be able to say "don't destroy the flag."	1	2	3	4	5
10. The fact is when you destroy one flag you're not destroying the flag. The flag stands strong as a symbol, and it's only the people that decide that the flag has been desecrated or not. And that's what the First Amendment really stands for; to cause us to debate the issue and to arrive at our own conclusions.	1	2	3	4	5
11. There is no time that you should burn the flag. I think the First Amendment does not allow you to burn the flag. I think the flag is the one thing that embodies all that is great about America, and it's the one thing that should not be desecrated in that manner.	1	2	3	4	5
12. The defendant [in the flag-burning case] . . . didn't intend to convey a political idea; it was the opposite of that. . . . It was no different than a child pounding . . . angered that his mother would not permit him to stay out past 10:30. That makes no contribution to the free speech goals of the First Amendment.	1	2	3	4	5
13. To protect the flag, Congress and the states should have the power to prohibit the physical desecration of the flag of the United States.	1	2	3	4	5
14. Let's think here. Do we really want to get into a pattern of amending the Constitution every time we think the Supreme Court has erred?	1	2	3	4	5
15. But the 5 to 4 decision of the Supreme Court leaves me with no alternative but to propose an amendment to the Constitution [to prohibit flag burning].	1	2	3	4	5
16. It's [the flag-burning amendment] an attempt to divide America, to divide fathers against sons, to divide families again. . . .	1	2	3	4	5
17. The question [of passing a flag-burning amendment] before us is whether or not, after 200 years in which the American Bill of Rights, the most concise, the most eloquent effective statement of individual liberty in all of human history, is to be changed for the first time.	1	2	3	4	5

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Student Handout 2
Whom Do You See?

Describe the woman in this picture.

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Student Handout 3
Is It "Speech"?

Directions: Read the following scenarios. Decide whether each would be protected as "freedom of speech," and write a *Y* (yes) or *N* (no) in the blank. Jot down a brief explanation for your answer.

Does freedom of speech give a person the right to:

_____ 1. Shout "fire" in a crowded movie theater?

_____ 2. Debate the value of nuclear arms with another citizen?

_____ 3. Sing the national anthem in a screeching manner at a National League baseball game?

_____ 4. Wear political symbols to school, such as a button that says "Down with America"?

_____ 5. Demonstrate peacefully in front of the White House to protest the president's plan to send troops to the Persian Gulf?

_____ 6. Use sexually suggestive, but not obscene, language in a campaign speech for high school student council?

_____ 7. Verbally abuse another person?

_____ 8. Not participate in reciting the "Pledge of Allegiance"?

_____ 9. Damage another person's reputation by spreading false rumors?

_____10. Encourage general illegal action, such as violence, in a public speech?

_____11. Stage a march by the Ku Klux Klan?

_____12. Burn the American flag?

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Student Handout 4

Texas v. Johnson

Directions: Read the following viewpoints from the 1989 Supreme Court case, *Texas v. Johnson*. Which do you think has the stronger arguments? Why?

Opinion A

. . . For more than 200 years, the American flag has occupied a unique position as the symbol of our nation, a uniqueness that justifies a governmental prohibition against flag burning in the way . . . Johnson did here. . . .

The American flag, . . . throughout more than 200 years of our history, has come to be the visible symbol embodying our nation. It does not represent the views of any particular political party, and it does not represent any particular political philosophy. The flag is not simply another "idea" or "point of view" competing for recognition in the marketplace of ideas. Millions and millions of Americans regard it with an almost mythical reverence regardless of what sort of social, political, or philosophical beliefs they may have. I cannot agree that the First Amendment invalidates the act of Congress, and the laws of 48 of the 50 states, which make criminal the public burning of the flag. . . .

. . . The Texas statute deprived Johnson of only one rather inarticulate symbolic form of protest—a form of protest that was profoundly offensive to many—and left him with a full [range] of other symbols and every conceivable form of verbal expression to express his deep disapproval of national policy. Thus, in no way can it be said that Texas is punishing him because his hearers—or any other group of people—were profoundly opposed to the message that he sought to convey. Such opposition is no proper basis for restricting speech or expression under the First Amendment. It was Johnson's use of this particular symbol, and not the idea that he sought to convey by it . . . for which he was punished. . . .

. . . [The lower court decided] that the American flag is just another symbol, about which not only must opinions pro and con be tolerated, but for which the most minimal public respect may not be [required]. The government may [draft] men into the armed forces where they must fight and perhaps die for the flag, but the government may not prohibit the public burning of the banner under which they fight. I would uphold the Texas statute as applied in this case.

Opinion B

The First Amendment literally forbids the abridgment only of "speech," but we have long recognized that its protection does not end at the spoken or written word. . . .

It remains to consider whether the state's interest in preserving the flag as a symbol of nationhood and national unity justifies Johnson's conviction. . . .

If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. . . .

We have not recognized an exception to this principle even where our flag has been involved. . . .

. . . To conclude that the government may permit designated symbols to be used to communicate only a limited set of messages would be to enter territory having no discernible or defensible boundaries. Could the government, on this theory, prohibit the burning of state flags? Of copies of the presidential seal? Of the Constitution? In evaluating these choices under the First Amendment, how would we decide which symbols were sufficiently special to warrant this unique status? To do so, we would be forced to consult our own political preferences, and impose them on the citizenry, in the very way that the First Amendment forbids us to do. . . .

There is, moreover, no indication—either in the text of the Constitution or in our cases interpreting it—that a separate . . . category exists for the American flag alone. Indeed, we would not be surprised to learn that the persons who framed our Constitution and wrote the [First] Amendment were not known for their reverence for the Union Jack [England's flag]. The First Amendment does not guarantee that other concepts virtually sacred to our Nation as a whole—such as the principle that discrimination on the basis of race is odious and destructive—will go unquestioned in the marketplace of ideas. . . .

We are tempted to say, in fact, that the flag's deservedly cherished place in our community will be strengthened, not weakened, by our holding today. Our decision is a reaffirmation of the principles of freedom and inclusiveness that the flag best reflects, and of the conviction that our toleration of criticism such as Johnson's is a sign and source of our strength. . . .

The way to preserve the flag's special role is not to punish those who feel differently. . . . It is to persuade them that they are wrong. . . . We can imagine no more appropriate response to burning a flag than waving one's own, no better way to counter a flag-burner's message than by saluting the flag that burns, no surer means of preserving the dignity even of the flag that burned than by—as one witness here did—according its remains a respectful burial. We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents. . . .

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Student Handout 5
Class Poll

Read each item below and place a check in the appropriate column.

	Agree	Disagree
1. When Joey Johnson was arrested for burning the flag, his protest was a legitimate expression of free speech.	_____	_____
2. Any flag burning is a legitimate expression of free speech.	_____	_____
3. The Supreme Court made the wrong decision in *Texas v. Johnson*.	_____	_____
4. The Supreme Court was right in striking down the Flag Protection Act passed by Congress in response to the Court decision in *Texas v. Johnson*.	_____	_____
5. The Constitution should include an amendment protecting the flag from desecration.	_____	_____
6. A constitutional amendment protecting the flag would violate the free speech clause of the First Amendment.	_____	_____
7. Joey Johnson is a radical.	_____	_____
8. Eugene "Red" McDaniel is a radical.	_____	_____
9. Protesters, regardless of their cause or their methods, deserve the protection of the Bill of Rights.	_____	_____
10. There are times when protesters do not deserve the protection of the Bill of Rights.	_____	_____

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